

REMARKS

This reply is intended to be completely responsive to the Final Office Action dated April 29, 2010.

Status

Claims 1-19 are pending in the application.

Claims 1, 3, 4 and 6-9 are allowed, and claims 2, 5 and 10-19 are rejected.

Upon entry of this amendment, each of the rejected claims, claims 2, 5 and 10-19, will be cancelled. Applicants respectfully request a Notice of Allowance for claims 1, 3, 4 and 6-9 indicated as allowed by the Examiner. Reconsideration and allowance of the application, as amended, is respectfully requested.

Allowed Claims

In the Office Action mailed April 29, 2010, the Examiner indicated that claims 1, 3, 4 and 6-9 are allowed. Accordingly, Applicants respectfully request entry of the amendment canceling the rejected claims and respectfully request allowance of claims 1, 3, 4 and 6-9.

By canceling the rejected claims, Applicants do not indicate agreement with or acquiescence in the rejection of claims 2, 5 and 10-19. Applicants have cancelled each of the rejected claims only to obtain prompt allowance of the claims indicated as allowed by the Examiner. Applicants reserve the right to file a continuing application covering the subject matter of claims 2, 5 and 10-19.

Objections to Drawings

I. Drawing Objection Under 37 C.F.R. § 1.83(a) Based on Claim 2

On page 2 of the Office Action, the Examiner has objected to the drawings under 37 C.F.R. § 1.83(a) as allegedly failing to show the device of claim 2. Upon entry of this

amendment, claim 2 will be cancelled. Accordingly, Applicants respectfully request withdrawal of the drawing objection under 37 C.F.R. § 1.83(a) based on the subject matter of claim 2.

II. Drawing Objection Under 37 C.F.R. § 1.83(a) Based on Claim 1

On page 2 of the Office Action, the Examiner has objected to the drawings under 37 C.F.R. § 1.83(a) based on claim 1, stating “The drawings are also objected to as they do not show the device with only one actuator between each segment of the device as in claim 1.” Applicants respectfully traverse this objection.

Claim 1 does not require “only one actuator between each segment of the device.” Claim 1 recites a “land vehicle having a material handling apparatus, *comprising*,” first, second and third telescopic actuators and first, second and third hydraulic actuators, among other elements. According to the MPEP, the transitional term “comprising” ... is inclusive or open-ended and does not exclude additional, unrecited elements or method steps.” MPEP § 2111.03. Because the opened-ended transitional phrase “comprising” is used, claim 1 requires the first, second and third telescopic actuators and first, second and third hydraulic actuators, but claim 1 should not be interpreted as requiring “only” the first, second and third telescopic actuators and first, second and third hydraulic actuators recited.

Further, 37 C.F.R. § 1.83(a) states “The drawing in a nonprovisional application must show every feature of the invention specified in the claims.” As discussed above, claim 1 recites six actuators (i.e., the first, second and third telescopic actuators and the first, second and third hydraulic actuators), and the Figures show at least six actuators. The fact the exemplary embodiment shown in the Figures includes more than the six actuators recited in the claim does not violate 37 C.F.R. § 1.83(a).

On page 4 of the Office Action, the Examiner asserts that Applicants argued that it is “clear that the various segments of the device only have one actuator between them for pivotal movement” and based on this is objecting to the drawings. However, Applicants respectfully

assert that in the response filed February 2, 2010, they did not argue or state that it is "clear that the various segments of the device only have one actuator between them for pivotal movement," as asserted by the Examiner. In addressing an indefiniteness rejection under 35 U.S.C. § 112, second paragraph, Applicants stated that claim 1 is not indefinite due to the recitation of six actuators. See Amendment and Reply Under 37 C.F.R. § 1.111, filed February 2, 2010, page 17. In the response, Applicants did not state that claim 1 recites only six actuators.

For the reasons stated above, Applicants respectfully request withdrawal of the objections to the drawing under 37 C.F.R. § 1.83(a).

Conclusion

After entry of this amendment, claims 1, 3, 4 and 6-9, indicated as allowed by the Examiner, will be pending. The Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application, as amended, is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, the Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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